

“Assigning error” and “taking exception” to a judge’s rulings were once simple and common-sense concepts in appellate practice and procedure.¹ But over time, the concepts developed a tortured and unworkable life of their own.

By the late 1900s, requirements for “assigning error” and “taking exception” had become archaic, formulaic, and burdensome. First, a party was required to lodge formal exceptions to alleged errors by using particular phrases—many of which were treated like magic words. The absence of those magic words could deprive a party of appellate review, even when the judge fully understood the party’s position on the alleged error. Second, when preparing the record on appeal, the appealing party had to craft formal assignments of error that described with excruciating detail the particular arguments that would be raised on appeal. The assignments of error also had to provide a specific reference to the place in the record where the party had formally excepted to the adverse ruling at issue. Thus, “assignments of error” and “exceptions” gradually became an unfair mechanism for limiting the issues that a party could raise on appeal. Novice and experienced appellate practitioners alike lived in fear of appellate courts refusing to address key appellate issues based on technical defects or ambiguities in their appeals’ exceptions or assignments of error.

To correct this imbalance, the Supreme Court of North Carolina amended the North Carolina Rules of Appellate Procedure to eliminate all references to assignments of error and taking exceptions. *See generally* [1989 Rules](#) (abolishing the use of exceptions) and [2009 Rules](#) (abolishing the use of assignments of error). As a result, parties are no longer required to link appellate arguments to formal “exceptions” or “assignments of error.” *See Barron v. Eastpointe*

¹ An “assignment of error” is a “specification of the trial court’s alleged errors on which the appellant relies in seeking an appellate court’s reversal, vacation, or modification of an adverse judgment.” *Assignment of Error*, *Black’s Law Dictionary* (11th ed. 2019). An “exception” is a “formal objection to a court’s ruling by a party who wants to preserve an overruled objection or rejected proffer for appeal.” *Exception*, *Black’s Law Dictionary* (11th ed. 2019).

Hum. Servs. LME, 246 N.C. App. 364, 374, 786 S.E.2d 304, 311 (2016) (rejecting an argument that a brief omitting formal assignments of error had abandoned those issues because “the requirement that an appellant set out assignments of error no longer exists under our Rules of Appellate Procedure” (cleaned up)). Rather, parties may argue any issue on appeal that was properly preserved by objection or by law by including arguments on those issues in their appellate briefs. *See* N.C. R. App. P. 10, 28.

Still, residual references to exceptions and assignments of error appear throughout the General Statutes—typically in statutes that discuss a party’s right to take an appeal. While these phrases may have been intended as general references to the modern-day requirements for preserving error, the continued use of these antiquated phrases in various statutes is worrisome and confusing. This is particularly true for parties unfamiliar with the tortured history associated with, and subsequent abolishment of, these two concepts. This lack of clarity is also troubling for parties analyzing whether a particular issue has been preserved for further review. Moreover, by continuing to refer to assignments of error and exceptions despite the amendments to the Rules of Appellate Procedure, the General Statutes as written could raise interpretive issues for judges faced with reconciling the inconsistent language.

To bring consistency and clarity to this area of the law, this group respectfully requests that the General Statutes Commission open a docket to consider changes to the statutes that refer to the now-defunct concepts of assignments of error and taking exceptions.